



## ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

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# REGULATORY ALERT BK-06-01

### “Transfer or Assignment of Your Mortgage Banker or Broker License”

A.R.S. §§ 6-903(O) and 6-944(A) state, in pertinent part, that a mortgage broker license and a mortgage banker license are “**not transferable or assignable.**”

Engaging in any of the activities listed below, commonly referred to as “net branching,” can result in the Department taking regulatory enforcement action up to and including license revocation and the imposition of a civil money penalty of not more than **five thousand dollars (\$5,000.00)** for each violation for each day. **THIS IS NOT AN EXHAUSTIVE LIST.**

- **DON'T** transfer or assign your mortgage broker or banker license to “branch managers” or “owners.”
- **DON'T** require branch managers to pay for branch start up costs, including, but not limited to, the cost of branch office licenses, bank account deposits, background checks, accounting fees, HUD license fees, security deposits, training, payroll fees, and loan software fees.
- **DON'T** require branch managers to sign agreements to pay monthly fees for using your license.
- **DON'T** fail to assume responsibility and liability for branch office leases that are rightfully your responsibility. You or your designated officers should sign rent and equipment leases, not branch managers.
- **DON'T** fail to assume the responsibility and liability for branch office equipment leases that are rightfully your responsibility. Branch managers should not sign these leases.
- **DON'T** fail to assume the responsibility and liability for utilities, office supplies and equipment, appraisals, alarm equipment, and any other bills incurred by branches. Bills, utilities, and invoices should be in licensee's name.
- **DON'T** inform the Better Business Bureau that your branches are independent.

### **“Transfer or Assignment of Your Mortgage Banker or Broker License”**

- **DON'T** fail to account for all branch income and expenses on tax returns and on financial statements.
- **DON'T** fail to maintain physical access to your branches at all times.
- **DON'T** fail to maintain control over the payment of your branch expenses.
- **DON'T** fail to maintain a uniform settlement service fee structure among all of your branch offices. Borrowers should be able to pay the same fees at any office. You should not allow branch managers to set their own fee structure.
- **DON'T** pay W-2 income to companies owned by branch managers in an attempt to evade taxes.
- **DON'T** fail to employ practices and procedures consistent with all HUD guidelines.
- **DON'T** fail to maintain control over branch bank accounts or allow branch managers to write payroll checks and reimburse themselves for expenses.

For more information, please access [www.hudclips.org](http://www.hudclips.org) and click on “Access HUD Letters and Notices from past years” to read, among other things, Mortgagee Letter 00-15, which addresses “Prohibited Branch Arrangements.”

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### **You Must Comply with Federal and Arizona Anti-Money Laundering Statutes**

A.R.S. § 6-1203(B)(3) specifically requires mortgage bankers to comply with the anti-money laundering laws located at A.R.S. §§ 6-1241, *et seq.* These statutes also cross-reference and require compliance with the federal anti-money laundering laws known as the Bank Secrecy Act (BSA), 31 U.S.C. §§ 5311-5326. Examinations will review and test for compliance.

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### **NOTICE**

**Pursuant to A.R.S. § 6-161(E), a financial institution or enterprise may not employ the person against whom a final removal, suspension, or prohibition order has been issued without the Superintendent’s prior written approval. Final orders will be posted on the Department’s website located at [www.azdfi.gov](http://www.azdfi.gov).**